

July 30, 1998

Agricultural Job Opportunity Benefits and Security Act Streamlining Regulations So American Farmers Win

Our nation's agriculture depends on the quick availability of qualified farm workers, especially at harvest time. Any shortage jeopardizes the livelihood not only of our nation's hard working farmers but also the employment opportunities of American workers and the competitive edge of our agricultural products.

At issue is the fact that fewer and fewer U.S. workers are being employed by our nation's agriculture employers. According to a recent Labor Office of Inspector General review: "The H-2A certification process is ineffective. It is characterized by extensive administrative requirements, paperwork and regulations that often seem dissociated with DOL's mandate of providing assurance that American workers' jobs are protected." In short, American workers supposedly protected by the current program are in effect being shorted by it.

In response, Republicans, with bipartisan support, introduced and passed the Agricultural Job Opportunity Benefits and Security Act. The AgJOBS amendment to S. 2260, the Commerce-Justice-State Appropriations bill, fundamentally streamlined the current H-2A program to guarantee the labor needs of our nation's growers while, at the same time, ensuring that American workers receive better employment guarantees.

Failure of the Current H-2A Program

A December 1997 General Accounting Office study of the H-2A program found that the Department of Labor missed its statutory deadlines for determining grower eligibility for labor assistance nearly 40 percent of the time.

- The current H-2A program is fraught with excessively burdensome paperwork and an overwhelmingly daunting number of inconsistent regulations. Even when certifications and decisions are finally made, they are more than often untimely to the point of worthlessness.

Replacing the old Mexican Bracero program, the first temporary foreign agricultural workers program was established in 1952 as the H-2 program. In 1986, the program was renamed the H-2A program, its current name.

The program was originally established to provide American farmers with temporary foreign agriculture workers when domestic workers are not available. The program is administered and enforced by the Employment and Training Administration within the Department of Labor. With respect to foreign workers, the Immigration and Naturalization Service handles entrance and work visas.

The most recent figure released from the Department of Labor estimates 23,352 H-2A job certifications in 1997.

The GAO estimates that 600,000 out of 1.6 million farm workers — fully 37 percent — are unauthorized workers.

- There is a real and threatening shortage of *legal* agricultural workers. A GAO study found that a large portion of farm workers present fraudulent work authorization documents. Thus, employers are faced with an unwinnable dilemma: question the authenticity of an increasing incidence of fraudulent work papers and risk expensive lawsuits or hire willing but potentially illegal workers and risk being fined or shut down by INS. Either way, America is not being served.

Assuring the Workforce Needs of American Farmers

- Under the AgJOBS reform package, the Attorney General will now certify the legal eligibility of all available H-2A workers. In addition, this package mandates the creation of counterfeit-proof work papers.
- This needed reform package recognizes the scarcity of legal workers. It recognizes the desire of agricultural employers to hire American workers by creating a certified job bank registry. Certified workers will be matched with employer needs using existing Department of Labor job banks. This registry replaces the burdensome and costly labor certification process and provides greater assurance to American farmers that they will have the workers they need to get their harvest to market.
- The current program mandates that employers provide housing before H-2A workers can be certified. The reform removes this expensive mandate by allowing employers the option of providing housing or of an allowance that would allow workers to find their own shelter. A further incentive is provided by giving employers a 40 percent credit on the user fee they pay to use the program.

American Workers First

- The AgJOBS amendment maintains preference for American workers. Employers are required to hire all qualified U.S. workers through at least half of their harvest period.
- The GAO has found no evidence that the current H-2A program is a revolving door for illegal alien workers. The amendment nonetheless increases protections against illegal entry by withholding a portion of each migrant worker's wages pending departure and barring violators from future participation in the program. The amendment also disallows program visas for additional family members unless they are certified as temporary agricultural workers in their own right.
- Workers are guaranteed fair standards of employment including: a prevailing industry wage within the region; a housing or a housing allowance; unemployment insurance coverage; in-bound and out-bound transportation reimbursement; and loosened Head Start eligibility for migrant farm worker children.

Staff contact: Kenneth Foss, 224-2946